

SPECIAL MEETING OF THE CITY COUNCIL:

Austin, Texas, September 27, 1937.

The meeting was called to order, with Mayor Tom Miller presiding. Roll call showed the following members present: Councilmen C. F. Alford, C. M. Bartholomew, Simon Gillis, and Mayor Tom Miller, 4; absent, Councilman Oswald G. Wolf, 1.

The following resolution was introduced, and upon motion duly made and seconded was adopted by the following vote: Ayes, Councilmen Alford, Bartholomew, Gillis, and Mayor Miller, 4; nays, none; Councilman Wolf absent, 1:

WHEREAS, The City desires to expedite the preliminary engineering work of the Lower Colorado River Authority in determining the proper engineering procedure necessary in rehabilitating the Lake Austin Dam and Power House; and

WHEREAS, The Public Works Administration requires that the City place in escrow the sum of \$35,000 to guarantee the cost of said engineering surveys and investigations in the event the City is not authorized as determined by a decision of the Supreme Court of Texas to enter into a lease contract with the Lower Colorado River Authority; or, in the event of said adverse decision of said Supreme Court of Texas, the City fails to so amend its charter to permit its legally entering into said lease contract with the Lower Colorado River Authority; therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

THAT the City Manager be, and he is hereby, authorized and directed to execute an escrow agreement jointly with the Lower Colorado River Authority and the American National Bank, placing in escrow with the American National Bank the sum of \$35,000, which escrow agreement is attached hereto and made a part of this resolution; and

BE IT FURTHER RESOLVED:

THAT the sum of \$35,000 out of the Water and Light Fund of the City of Austin, not otherwise appropriated, is hereby appropriated, to be deposited in escrow with the American National Bank, for the purposes above stipulated.

(AGREEMENT ATTACHED)

ESCROW AGREEMENT, dated September _____, 1937, between the CITY OF AUSTIN, (herein called the "City"), a municipal corporation in Travis County, State of Texas, organized and existing under a Charter duly adopted by the citizens thereof under the "Home Rule Amendment" of the Constitution of the State of Texas, party of the first part, LOWER COLORADO RIVER AUTHORITY (herein called the "Authority"), a Conservation and Reclamation District organized and existing by virtue of an Act of the Legislature of the State of Texas (Chapter 7, Acts of the Fourth Called Session of the Forty-third Legislature, as amended), party of the second part, and THE AMERICAN NATIONAL BANK OF AUSTIN (herein called the "Escrow Agent"), individually and as trustee under the Indenture, dated as of June 1, 1935, of said Lower Colorado River Authority, as amended (herein called the "Indenture"), party of the third part.

WHEREAS, the City and the Authority desire to enter into a lease (herein called the "lease") by which the City will lease to the Authority the Austin Dam and certain other property described in the Lease, and the Authority is to reconstruct said dam and construct certain improvements upon the leased premises, and said Lease has been duly approved by the City Council of the City and duly executed on behalf of the City

by the City Manager and Mayor thereof, and has been approved by the Board of Directors of the Authority, but the General Manager thereof has refused to execute the same on behalf of the Authority upon the ground that the City is not authorized under the Charter to enter into said lease; and

WHEREAS, the Lease provides that the Authority will make certain engineering surveys and investigations, at a cost of not exceeding \$35,000, to determine the feasibility and economic desirability of the reconstruction of the Austin Dam and the construction of the aforesaid improvements; and

WHEREAS, the City will commence a mandamus proceeding in the Supreme Court of Texas against said General Manager to compel him to execute said Lease on behalf of the Authority, the determination of said proceeding being dependent upon the power of the City to enter into said Lease;

WHEREAS, the City desires the Authority to proceed at once with said engineering surveys and investigations, in order that, if the Lease is executed, the reconstruction of the Austin Dam (if determined to be desirable and feasible) by the Authority can proceed without delay, or, in the event that the City shall be without power to enter into said Lease, the City may obtain the benefits of said engineering surveys and investigations and may (in its discretion) proceed with the reconstruction on its own account of the Austin Dam;

NOW, THEREFORE, THIS AGREEMENT WITNESSETH:

1. The City has deposited with the Escrow Agent the sum of \$35,000, and the Escrow Agent agrees with the City and the Authority that it will hold and apply said sum for the purposes hereinafter set forth, and pending such application, will hold the same in a special account for the purposes of this agreement and for no other purpose.

2. The Authority covenants that it will, promptly upon advance of the necessary funds by the Federal Emergency Administrator of Public Works (herein called the "Administrator") pursuant to the Loan Agreement referred to in the Indenture, make the necessary engineering surveys and investigations to determine the feasibility and economic desirability of the reconstruction of the Austin Dam, all in accordance with the provisions of Article II of the Lease, and the Escrow Agent, as Trustee under the Indenture, will (but only in accordance with the provisions of the Indenture and as authorized thereby) pay or reimburse the Authority for the expenses of such surveys and investigations out of the Construction Fund provided for in Article IV of the Indenture, not exceeding in any event, however, the sum of \$35,000.

3. In the event that, on or before April 1, 1938,

(a) The Supreme Court of Texas shall have finally determined that the City of Austin has power to enter into the Lease, and that said Lease, when executed by the City and by the Authority, will be valid and binding obligations of the City and the Authority in accordance with the terms thereof; or

(b) The Charter of the City shall have been amended in such manner, satisfactory to the Administrator, that the City shall be authorized to enter into the Lease, and that said Lease, when duly executed by the City and the Authority, will be the valid and binding obligations of the City and the Authority in accordance with the terms thereof;

then, and upon the happening of either such event, the Escrow Agent shall repay to the City the \$35,000 deposited by the City pursuant to the provisions of Section 1 hereof.

4. In the event that neither of the events referred to in subdivisions (a) and (b) of Section 3 hereof shall have happened on or before April 1, 1938, the Escrow Agent shall, on said date, deposit in the Construction Fund provided for in Article IV of the Indenture, the amount theretofore disbursed for the payment of expenses of the engineering surveys and investigations referred to in Section 2 hereof and, after retaining an amount sufficient to pay any of such expenses remaining unpaid, shall pay any balance of said \$35,000 to the City. Out of the amount so retained by the Escrow Agent, the Escrow Agent shall pay the balance of the expenses of such engineering surveys and investigations, and, whenever all of said expenses shall have been paid, shall repay to the City any balance then remaining.

5. The Authority will, promptly upon deposit in the Construction Fund of the amounts referred to in Section 4 hereof and the setting aside of an amount sufficient to pay all expenses remaining unpaid, in accordance with said section, deliver to the City all data, reports and information which it shall have acquired by such surveys and investigations, and the same shall become the property of the City for all purposes.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers, as of the day and year first above written, but actually on _____, 1937.

THE CITY OF AUSTIN

By _____

Attest:

LOWER COLORADO RIVER AUTHORITY

By _____

Attest:

THE AMERICAN NATIONAL BANK OF AUSTIN

By _____

Attest:

Upon motion, duly seconded and carried, the meeting was recessed, subject to call of the Mayor.

Approved: Tom Miller
Mayor

Attest:
Harris McKeen
City Clerk